

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRIAN MAX AUSBORN,

Defendant.

No. 19-CR-1005 CJW-MAR

**ORDER REGARDING MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION
CONCERNING DEFENDANT'S
GUILTY PLEA**

I. INTRODUCTION AND BACKGROUND

On February 21, 2019, a six-count Indictment was filed against defendant. On December 23, 2019, defendant appeared before United States Magistrate Judge Mark A. Roberts and entered a plea of guilty to count one of the Indictment, conspiracy to distribute and possess with the intent to distribute methamphetamine, in violation of 21 U.S.C. Sections 841(a)(1), 841(b)(1)(C), and 851. Defendant did not plead guilty to the portion of Count 1 that alleges a violation of 21 U.S.C. Section 860(a).

On December 26, 2019, Judge Roberts filed a Report and Recommendation in which he recommended that defendant's guilty plea be accepted. The parties did not file objections to Judge Roberts' Report and Recommendation. The Court, therefore, undertakes the necessary review of Judge Roberts' recommendation to accept defendant's plea in this case.

II. ANALYSIS

Pursuant to statute, this Court's standard of review for a magistrate judge's report and recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or

recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b)(1)(C).

Where parties make no objections to a magistrate's report and recommendation, the Court reviews the magistrate's report and recommendation for clear error. 28 U.S.C. § 636(b)(1)(A). Similarly, Federal Rule of Criminal Procedure 59(b) provides for review of a magistrate judge's report and recommendation on dispositive motions, where objections are made, as follows:

The district judge must consider de novo any objection to the magistrate judge's recommendation. The district judge may accept, reject, or modify the recommendation, receive further evidence, or resubmit the matter to the magistrate judge with instructions.

FED. R. CRIM. P. 59(b)(3).¹

In this case, the parties filed no objections, and it appears to the Court upon review that Judge Roberts' findings and conclusions are not clearly erroneous. Therefore, the Court **ACCEPTS** Judge Roberts' Report and Recommendation of December 26, 2019, and **ACCEPTS** defendant's plea of guilty in this case to only the portion of count one of the Indictment regarding conspiracy to distribute and possess with the intent to distribute methamphetamine, in violation of 21 U.S.C. Sections 841(a)(1), 841(b)(1)(C), and 851.

¹ *United States v. Cortez-Hernandez*, 673 F. App'x 587, 590-91 (8th Cir. 2016) (per curiam), suggests that a defendant may have the right to de novo review of a magistrate judge's recommendation to accept a plea of guilty even if no objection is filed.

IT IS SO ORDERED this 13th day of January, 2020.

A handwritten signature in black ink, appearing to read 'CJ Williams', with a long horizontal flourish extending to the right.

C.J. Williams
United States District Judge
Northern District of Iowa